

In the Matter of Merchant Mariner's Document No. Z-68316 and all other Seaman Documents  
Issued to: HENRY J. MILLER

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1019

HENRY J. MILLER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 18 July 1957, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as a cook on board the American SS ROBERT STUART under authority of the document above described, on or about 8 June 1957, Appellant wrongfull engaged in a fight with the ship's Boatswain; on or about 9 June 1957, Appellant wrongfully threw hot grease on crew messman Samuel Miller.

At the hearing, Appellant was represented by counsel and entered pleas of not guilty to each specification. The Investigating Officer introduced in evidence the testimony of the Boatswain, and certified copies of entries in the ship's Official Logbook to prove the second specification. A steward utilityman, who was not an eyewitness to any of the events in question, and Appellant testified in his behalf.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and two specifications had been proved. An order was entered revoking all documents issued to Appellant.

The decision was mailed on 19 July 1957. Appeal was timely filed on 20 August.

On 8 and 9 June 1957, Appellant was serving as a cook on board the American SS ROBERT STUART and acting under authority of his Merchant Mariner's Document No. Z-68316 while the ship was at the port of Iskenderum, Turkey.

About 1500 on 8 June 1957, Appellant entered the room shared by the Boatswain and another crew member. While Appellant was pouring vodka into a glass, he spilled some of it on the Boatswain who was sleeping in his bunk. He was awakened and chased Appellant

out of the room. The Boatswain then went out on deck and was standing by the bulwark when he saw Appellant approach as though to engage in conversation. The Boatswain turned away and was struck on the side of the head with a piece of bone wielded by Appellant. The ship's icebox keys were attached to the bone. The Boatswain turned, was struck again with the bone and scuffled with Appellant until they were separated. The Boatswain received medical treatment ashore and returned to the ship fit for duty at 1800 on the same date.

At approximately 1700 on the next day, Appellant was cooking the crew's meal and passing orders to the messmen to serve to the crew members. Messman Samuel Miller, who was somewhat, was confusing the orders of the various members of the crew and placing the blame on the cooks. Messman Miller directed abusive language toward the cooks in a loud voice. Appellant had been aggravated by this messman on other occasions. Messman Miller continued to use this abusive language after Appellant asked him to stop it. When the messman returned to the galley counter for another order, Appellant picked up a container of hot grease and threw the grease at messman Miller. It struck him on the face just below the eyes as well as on his upper arms and body. Miller suffered second degree burns which necessitated medical treatment ashore, confinement to the ship's hospital and subsequent hospitalization at Ceuta, Spanish Morocco, on 20 June for an undetermined length of time.

Appellant's prior disciplinary record consists of a probationary suspension in 1945 for assault with a meat cleaver and two comparatively minor offenses prior to 1946.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the findings are against the weight of the evidence; Appellant was provoked into throwing the hot grease on messman Miller as a result of his abusive conduct; the order is too severe considering the circumstances and Appellant's service at sea for more than 30 years.

In conclusion, it is respectfully requested that the order of the Examiner be set aside.

APPEARANCE: Messrs. Klein, Sardaro and Nolan of New York City by Robert J. Ward,  
Esquire, of Counsel.

#### OPINION

It is my opinion that the two specifications were proved by substantial evidence. This is the required degree of proof rather than proof beyond a reasonable doubt as in criminal actions.

With respect to the incident involving the Boatswain, it was a question of Appellant's word against that of the Boatswain. The Examiner, who saw and heard the witnesses, specifically stated that he accepted the version testified to by Boatswain. Since there is no reason to reject this finding as to credibility by the Examiner, the Boatswain's recollection of the incident is set forth in the above

findings of fact. There is no doubt from these facts that Appellant's conduct was wrongful.

Appellant admits having thrown hot grease on messman Miller but attempts to justify this act on the basis of provocation by Miller. The extent of the immediate provocation was the abusive language used by messman Miller. Insulting language does not justify assault and battery. The evidence shows that the messman was severely burned by the hot grease which was deliberately thrown on him by Appellant.

Considering the serious nature of this last offense, the attack upon the Boatswain and Appellant's prior record of assault with a dangerous weapon, the order of revocation is suitable to the circumstances. Appellant has proved by his conduct that he is an undesirable person to serve as a merchant seaman.

### ORDER

The order of the Examiner dated at New York, New York, on 18 July 1957, is ~~is~~ **AFFIRMED**.

A. C. Richmond  
Vice Admiral United States Coast Guard  
Commandant

Dated at Washington, D. C., this 10th day of April, 1958.